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2000

PUBLIC WORKS PROJECTS. USE OF PRIVATE CONTRACTORS FOR ENGINEERING AND ARCHITECTURAL SERVICES.

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Official Title and Summary Prepared by the Attorney General**PUBLIC WORKS PROJECTS. USE OF PRIVATE CONTRACTORS FOR ENGINEERING AND ARCHITECTURAL SERVICES.**

Initiative Constitutional Amendment and Statute.

- Amends constitution to provide that in the design, development and construction of public works projects, state government may choose to contract with private entities for engineering and architectural services without regard to certain existing legal restrictions which apply to the procurement of other services.
- Specifies that local governments may also choose to contract with private entities for engineering, architectural services.
- Imposes competitive selection process, which permits but does not require competitive bidding, in awarding engineering and architectural contracts.

Summary of Legislative Analyst's Estimate of Net State and Local Government Fiscal Impact:

- Unknown fiscal impact on state spending for architectural and engineering services and construction project delivery. Actual impact will depend on how the state uses the contracting flexibility granted by the proposition in the future.
- Little or no fiscal impact on local governments because they generally can now contract for these services.

BACKGROUND

Under California constitutional law, services provided by state agencies generally must be performed by state civil service employees. These services cover a broad range of activities—such as clerical support, building maintenance and security, and legal services. In some cases, however, the state may contract with private firms to obtain services. Such contracting is allowed, for example, if services needed by the state are: (1) of a temporary nature, (2) not available within the civil service, or (3) of a highly specialized or technical nature. Unlike the state, local governments are not subject to constitutional restrictions on contracting for services.

The state and local governments frequently contract with private firms for construction-related services, which include architectural, engineering, and environmental impact studies. State and local governments enter into these contracts through a competitive process of advertising for the service, selecting the firm determined to be best qualified, and negotiating a contract with that firm. However, neither the state nor most local government entities use a bidding process for these services. By comparison, bidding generally is used to acquire goods and for construction of projects.

PROPOSAL

This proposition amends the State Constitution to allow the state and local governments to contract with qualified private entities for architectural and engineering services for all phases of a public works project. Thus, governments could decide to contract out for these specific services in any case, rather than just on an exception basis.

The proposition also enacts statutory laws which:

- Define the term “architectural and engineering services” to include all architectural, landscape architectural, environmental, engineering, land surveying, and construction project management services.
- Specify that all projects in the State Transportation Improvement Program (STIP) are covered by the requirements of the proposition. The STIP is the state’s transportation plan that includes public works projects to increase the capacity of the state’s highways and provide transit capital improvements (such as new freeways, new interchanges, and passenger rail rights-of-way). The STIP is the state’s largest ongoing capital improvement program.

Thus, the proposition would probably have the greatest impact in the transportation area.

- Require architectural and engineering services to be obtained through a fair, competitive selection process that avoids conflicts of interest.

FISCAL EFFECT

Impacts on State Costs

Eliminating restrictions on contracting out for architectural and engineering services would make it easier for the state to enter into contracts with private individuals or firms to obtain these services. As a result, the state would likely contract out more of these services. This could affect state costs in two main ways.

Cost of the Services. The fiscal impact would depend on the cost of salaries and benefits for state employees performing architectural and engineering services compared to the cost of contracts with private firms. These costs would vary from project to project. In some cases, costs may be higher to contract out. It may still be in the state’s best interest to do so, however, because of other considerations. For instance, during times of workload growth (such as a short-term surge in construction activity), contracting for services could be faster than hiring and training new state employees. In addition, contracting can prevent the build-up of a “peak-workload” staff that can take time to reduce once workload declines.

For these reasons, the proposition’s net impact on state costs for architectural and engineering services is unknown, and would depend in large part on how the state used the flexibility granted under the measure.

Impact on Construction Project Delivery. The ability to contract for architectural and engineering services could also result in construction projects being completed earlier. As noted above, during times of workload growth, the ability to contract for these services could result in projects’ completion earlier than through the hiring and training of new state employees. This, in turn, could have state fiscal impacts—such as savings in construction-related expenses. In these cases, faster project completion would also benefit the public as capital improvements would be in service sooner.

Impacts on Local Government Costs

There should be little or no fiscal impact on local governments because they generally can now contract for architectural and engineering services.

35 PUBLIC WORKS PROJECTS. USE OF PRIVATE CONTRACTORS FOR ENGINEERING AND ARCHITECTURAL SERVICES.

Initiative Constitutional Amendment and Statute.

Argument in Favor of Proposition 35

TRAFFIC GRIDLOCK, OVERCROWDED SCHOOLS:
DOESN'T IT JUST MAKE SENSE TO PUT EVERYONE TO WORK TO SOLVE THESE PROBLEMS?

- Proposition 35, the Fair Competition Initiative, simply gives state and local governments the choice to hire qualified private sector engineers and architects where it makes sense to do so—SOMETHING MANY OTHER STATES DO ALREADY.

Why is Proposition 35 needed?

BEEN STUCK IN TRAFFIC LATELY?

According to the state's independent Legislative Analyst, last year traffic congestion cost California consumers \$7.8 million a day! *There is a huge BACKLOG of transportation projects needed to REDUCE CONGESTION and PREPARE OUR HIGHWAYS, BRIDGES AND OVERPASSES FOR THE NEXT EARTHQUAKE.*

- PROP. 35 WILL ALLOW US TO USE PRIVATE EXPERTS TO GET TRANSPORTATION PROJECTS COMPLETED ON TIME AND ON BUDGET—AND KEEP TAXES DOWN.

How did we get into this mess?

A small group of Caltrans bureaucrats—concerned only with their self-interests—filed several lawsuits that essentially banned the state from hiring private architects and engineers. *They even terminated 15 existing earthquake retrofit contracts with private engineering firms.*

- PROP. 35 WILL ALLOW CALIFORNIA TO ONCE AGAIN MAKE USE OF PRIVATE SECTOR EARTHQUAKE EXPERTS TO ENSURE THE SAFETY OF OUR HIGHWAYS AND BRIDGES.

But the problem doesn't end there: *school districts, cities, counties and other local agencies' ability to choose both private and public sector architects and engineers is at risk, too.*

Prop. 35 would simply restore state and local agencies' choice to utilize private experts—using the same fair selection process on the books today—to select the most qualified architects or engineers to get these projects designed and built on time and on budget.

- PROP. 35 MEANS WE DON'T HAVE TO RELY ONLY ON CALTRANS.

The state's independent Legislative Analyst recommended Caltrans contract out more work.

Why? Caltrans simply cannot do all the work alone. *Plus, 17% of the Caltrans engineers have less than 3 years experience. And Caltrans is hardly a model of efficiency—a recent university study shows Caltrans spends more on administration than on maintenance of our roads and highways!*

- THE CALIFORNIA TAXPAYERS' ASSOCIATION and other taxpayer groups SUPPORT PROP. 35 because it could SAVE CALIFORNIANS \$2.5 BILLION ANNUALLY and CREATE 40,000 JOBS over the next ten years.

California's population is growing, creating the need for more schools, roads, transit, hospitals and other vital services. *THERE'S PLENTY OF WORK FOR BOTH PUBLIC AND PRIVATE ENGINEERS AND ARCHITECTS to relieve traffic congestion, accommodate growing school needs and retrofit our aging highway system.*

- COMMON SENSE TELLS US PUBLIC-PRIVATE PARTNERSHIPS ARE THE MOST COST-EFFECTIVE WAY TO MEET THESE NEEDS and SAVE TAXPAYERS MONEY.

With so much at stake, WE NEED ALL HANDS ON DECK.

Join with:

- California Taxpayer Protection Committee
- Coalition for Adequate School Housing
- California Minority and Women's Business Coalition
- California Chamber of Commerce
- California Society of Professional Engineers
- National Federation of Independent Business
- J. E. Smith, Former Commissioner of the California Highway Patrol

And hundreds of school districts, cities, counties, water districts, transportation agencies and earthquake engineers.

VOTE YES on 35.

LARRY MCCARTHY, *President*

California Taxpayers' Association

LORING A. WYLLIE, JR., *Past President*

Earthquake Engineering Research Institute

TODD NICHOLSON, *President*

Californians for Better Transportation

Rebuttal to Argument in Favor of Proposition 35

Proposition 35's backers use buzzwords: "gridlock," "overcrowded schools." BUT THEY DON'T SAY WHAT IT ACTUALLY DOES.

They say we need to give government "the choice" to contract with private engineering corporations. But that choice ALREADY EXISTS.

FACTS:

- CALIFORNIA ALREADY USES BOTH PUBLIC AND PRIVATE ENGINEERS. Just like other states, THOUSANDS OF GOVERNMENT CONTRACTS ARE ANNUALLY AWARDED to private firms of every kind. This year, Caltrans will spend \$150,000,000.00 on contracts with private engineers.

- PUBLIC-PRIVATE PARTNERSHIPS ALREADY EXIST. For example, when the Northridge earthquake knocked down the Santa Monica Freeway, a partnership of Caltrans engineers and private construction companies rebuilt it in record time.

So why is Proposition 35 on the ballot?

The REAL PURPOSE is to benefit engineering consultants who paid to put Proposition 35 on the ballot.

- Proposition 35 AMENDS THE CONSTITUTION TO EXEMPT JUST THIS ONE INDUSTRY from legal requirements that apply to every other business that contracts with state government.

- Proposition 35 REQUIRES A NEW SELECTION PROCESS WHICH IT DOES NOT DEFINE. How will engineering contracts be awarded? Proposition 35 doesn't say.

Because Proposition 35 doesn't define the process, it will cause CONFUSION, LITIGATION AND COSTLY ROAD AND SCHOOL CONSTRUCTION DELAYS while new regulations are created and challenged in court.

California Federation of Teachers says Proposition 35 will delay construction needed for class size reduction. Howard Jarvis Taxpayers Association says Proposition 35 will COST TAXPAYERS HUNDREDS OF MILLIONS OF DOLLARS.

Don't let a special interest change the Constitution for its benefit, not yours.

VOTE NO ON PROPOSITION 35!

LENNY GOLDBERG, *Executive Director*

California Tax Reform Association

MARY BERGAN, *President*

California Federation of Teachers

HOWARD OWENS, *President*

Consumer Federation of California

PUBLIC WORKS PROJECTS. USE OF PRIVATE CONTRACTORS FOR ENGINEERING AND ARCHITECTURAL SERVICES. **35**

Initiative Constitutional Amendment and Statute.

Argument Against Proposition 35

You've seen it before, and here we go again. PROPOSITION 35 IS ANOTHER MISLEADING, SELF-SERVING, SPECIAL INTEREST INITIATIVE.

WHO'S BEHIND PROPOSITION 35?

According to official reports, huge engineering corporations paid millions to place Proposition 35 on the ballot and they are spending millions more to mislead you into voting for it. Are they really spending all that money to help you, the taxpayer? Of course not!

PROPOSITION 35 CHANGES CALIFORNIA'S CONSTITUTION so large engineering corporations don't have to abide by the rules that apply to every other business that contracts with government in California. Every year, state and local governments spend billions of dollars on contracts with thousands of businesses.

PROPOSITION 35 CREATES A SPECIAL INTEREST EXEMPTION FOR ONLY ONE GROUP—ITS SPONSORS!

HOW DOES PROPOSITION 35 AFFECT YOU?

Independent experts agree that PROPOSITION 35 WILL DELAY CONSTRUCTION OF ROADS, SCHOOLS, HEALTH CARE FACILITIES, and other needed projects for years.

A top regulatory expert says Proposition 35 will bring public contracting to a "crawl, if not a complete halt" while a NEW BLOATED STATE BUREAUCRACY develops a NEW SET OF STATE REGULATIONS and IMPOSES THEM ON OUR CITIES, COUNTIES, AND SCHOOL DISTRICTS!

Independent legal analyses say LAWSUITS WILL CAUSE EVEN MORE DELAYS!

THESE DELAYS COST YOU MONEY! The former State Auditor General, California's independent fiscal watchdog, identified MORE THAN \$8 BILLION of school, road, and hospital projects that will be delayed at a cost of HUNDREDS OF MILLIONS OF DOLLARS! Taxpayer dollars—YOUR DOLLARS!

Project delays mean TRAFFIC CONGESTION WILL GET WORSE. That's why the Engineers and Scientists of California and public

safety organizations—including the California Association of Highway Patrolmen and the California Professional Firefighters—oppose Proposition 35.

PROPOSITION 35 WILL DELAY CONSTRUCTION OF NEW CLASSROOMS NEEDED TO REDUCE CLASS SIZE AND IMPROVE EDUCATION. That's why educators, including school districts throughout California and the California School Employees Association, oppose Proposition 35.

PROPOSITION 35 WILL DELAY CONSTRUCTION OF HEALTH CARE FACILITIES, increasing the cost of health care. That's why health care professionals and seniors groups—including the California Nurses Association and the Congress of California Seniors—oppose Proposition 35.

Jon Coupal, President of the HOWARD JARVIS TAXPAYERS ASSOCIATION, says "Taxpayers should be very concerned with this proposal and its potential costs. We urge voters to vote NO on Proposition 35."

Don't let a few huge, greedy corporations mislead you into voting to change the Constitution to give them a special exemption so they can waste your tax dollars! Please join with the Howard Jarvis Taxpayers Association, the California Tax Reform Association, the Consumer Federation of California, the California Small Business Roundtable, law enforcement, firefighters, teachers, seniors, nurses, labor and many, many others who OPPOSE PROPOSITION 35.

VOTE NO ON PROPOSITION 35!

JEFF SEDIVEC, *President*

California State Firefighters' Association

LOIS WELLINGTON, *President*

Congress of California Seniors

MARLAYNE MORGAN

Engineers and Scientists of California

Rebuttal to Argument Against Proposition 35

They're at it again. *The CALTRANS BUREAUCRATS WHO ARE BANKROLLING THE CAMPAIGN AGAINST PROP. 35 will stop at nothing.*

First they filed lawsuits to terminate government's ability to contract with private sector architects and engineers. Then they brought *more* lawsuits to deny you the opportunity to vote on Prop. 35.

Now that it's on the ballot, those same bureaucrats are using their political allies in Sacramento and discredited studies to try to deceive you.

We invite you to read Prop. 35 yourself. IT'S THE MOST STRAIGHTFORWARD INITIATIVE ON THE BALLOT.

Prop. 35 will simply restore the ability of state and local government to use qualified private sector engineers and architects where it makes sense to do so—something many other states do already.

PROP. 35 DOESN'T CREATE ANY NEW COMPLICATED REGULATIONS OR DELAYS. *On the contrary, it restores the public/private partnerships needed to speed up the delivery of thousands of backlogged public works projects.*

That's precisely why hundreds of local governments, schools, transportation agencies, engineers, earthquake safety experts and *more than a dozen taxpayer groups* URGE A YES VOTE ON PROP. 35.

Working together, the public and private sectors can GET THE JOB DONE SOONER, SAFELY and MORE EFFICIENTLY.

It's a simple question really:

- If you want to preserve the Caltrans status quo of delays, vote no.

- If you want to see the PUBLIC AND PRIVATE SECTORS WORKING TOGETHER to speed up project delivery, SAVE taxpayers \$2.5 BILLION ANNUALLY and create 40,000 new jobs . . . VOTE YES on PROP. 35.

MIKE SPENCE, *President*

California Taxpayer Protection Committee

RON HAMBURGER, *President*

Structural Engineers Association of California

MICHAEL E. FLYNN, *President*

Taxpayers for Fair Competition—a coalition of taxpayers, engineers, seniors, schools, local government, business, labor, highway safety experts and frustrated commuters

Ballot Measure Summary

PROPOSITION

34

CAMPAIGN CONTRIBUTIONS AND SPENDING.
LIMITS. DISCLOSURE.

LEGISLATIVE INITIATIVE AMENDMENT.

Put on the Ballot by the Legislature.

SUMMARY

Limits campaign contributions and loans to state candidates and political parties. Provides voluntary spending limits; expands public disclosure requirements and increases penalties. Fiscal Impact: Additional net costs to the state, potentially up to several million dollars annually, and unknown but probably not significant costs to local government.

WHAT YOUR VOTE MEANS

YES

A **YES** vote on this measure means: New contribution and voluntary spending limits will be established for state elective offices. Limits previously adopted by the voters for state and local offices, which have not been implemented because of a pending lawsuit, would be repealed. The new limits are higher than those that would be repealed.

NO

A **NO** vote on this measure means: Existing contribution and voluntary spending limits for state and local elective offices enacted by a voter-approved initiative would not be repealed.

ARGUMENTS

PRO

Proposition 34 is real reform that puts voters—not special interests—back in charge of California's political process. Proposition 34 sets enforceable, constitutional limits on campaign financing where none exist today. It limits contributions and spending, speeds up disclosure, increases fines and closes loopholes for wealthy candidates without public financing.

CON

Incumbent politicians will be begging for money when they should be tending to the public's business. Challengers will be forced to seek campaign funds from any and all sources that want political favors from Sacramento. *Proposition 34 is a recipe for a government more beholden to special interests.* Vote No.

FOR ADDITIONAL INFORMATION

FOR

Tom Knox
Committee for Constitutional
Campaign Reform

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CAyeson34.org

AGAINST

Lonni Granlund
Western Group

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PROPOSITION

35

PUBLIC WORKS PROJECTS. USE OF
PRIVATE CONTRACTORS FOR ENGINEERING
AND ARCHITECTURAL SERVICES.

INITIATIVE CONSTITUTIONAL AMENDMENT AND STATUTE.

Put on the Ballot by Petition Signatures.

SUMMARY

Amends Constitution eliminating existing restrictions on state, local contracting with private entities for engineering, architectural services; contracts awarded by competitive selection; bidding permitted, not required. Fiscal Impact: Unknown impact on state spending for architectural and engineering services and construction project delivery. Actual impact will depend on how the state uses the contracting flexibility under the proposition.

WHAT YOUR VOTE MEANS

YES

A **YES** vote on this measure means: The state could contract with private individuals or firms for architectural and engineering services in all situations rather than only under certain conditions (such as when the work is of a temporary nature or of such a specialized nature that it cannot be provided by state employees).

NO

A **NO** vote on this measure means: The state could contract with private individuals or firms for architectural and engineering services only under certain conditions.

ARGUMENTS

PRO

Prop. 35—Supported by hundreds of taxpayer groups, seniors, schools, local governments, business, labor, highway/earthquake safety engineers. *Restores government's ability to engage in public/private partnerships with qualified engineers to speed up thousands of backlogged highway and other public works projects.* Creates 40,000 jobs. Saves taxpayers \$2.5 billion annually.

CON

Proposition 35 changes the Constitution to benefit one special interest at taxpayer expense. Like other states, California currently awards engineering contracts based on cost, qualifications, and experience. Prop. 35 replaces that with an undefined contracting process which allows overpriced government contracts based on campaign contributions and political influence. *Vote No!*

FOR ADDITIONAL INFORMATION

FOR

Taxpayers for Fair Competition—
A coalition of taxpayers, engineers, seniors, schools, local government, business, labor, highway safety experts and frustrated commuters.
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Los Angeles, CA 90064
(310) 996-2671/Info@YesProp35.com
www.YesProp35.com

AGAINST

Steve Hopcraft
No On Prop. 35

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Sacramento, CA 95816
(916) 446-0512
noonprop35@cw.com
noonprop35.org

SEC. 85. (a) A special election is hereby called to be held throughout the state on November 7, 2000. The election shall be consolidated with the statewide general election to be held on that date. The consolidated election shall be held and conducted in all respects as if there were only one election and only one form of ballot shall be used.

(b) Notwithstanding Section 9040 of the Elections Code or any other provision of law, the Secretary of State, pursuant to

subdivision (b) of Section 81012 of the Government Code shall submit this act for approval to the voters at the November 7, 2000, statewide general election.

SEC. 86. This is an act calling an election pursuant to paragraph (3) of subdivision (c) of Section 8 of Article IV of the California Constitution, and shall take effect immediately.

Proposition 35: Text of Proposed Law

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure adds sections to the California Constitution and the Government Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

FAIR COMPETITION AND TAXPAYER SAVINGS INITIATIVE

SECTION 1. TITLE

This measure shall be known and may be cited as the “Fair Competition and Taxpayer Savings Act.”

SEC. 2. PURPOSE AND INTENT

It is the intent of the people of the State of California in enacting this measure:

(a) To remove existing restrictions on contracting for architectural and engineering services and to allow state, regional and local governments to use qualified private architectural and engineering firms to help deliver transportation, schools, water, seismic retrofit and other infrastructure projects safely, cost effectively and on time;

(b) To encourage the kind of public/private partnerships necessary to ensure that California taxpayers benefit from the use of private sector experts to deliver transportation, schools, water, seismic retrofit and other infrastructure projects;

(c) To promote fair competition so that both public and private sector architects and engineers work smarter, more efficiently and ultimately deliver better value to taxpayers;

(d) To speed the completion of a multi-billion dollar backlog of highway, bridge, transit and other projects;

(e) To ensure that contracting for architectural and engineering services occurs through a fair, competitive selection process, free of undue political influence, to obtain the best quality and value for California taxpayers; and

(f) To ensure that private firms contracting for architectural and engineering services with governmental entities meet established design and construction standards and comply with standard accounting practices and permit financial and performance audits as necessary to ensure contract services are delivered within the agreed schedule and budget.

SEC. 3. Article XXII is added to the California Constitution, to read:

SECTION 1. The State of California and all other governmental entities, including, but not limited to, cities, counties, cities and counties, school districts and other special districts, local and regional agencies and joint power agencies, shall be allowed to contract with qualified private entities for architectural and engineering services for all public works of improvement. The choice and authority to contract shall extend to all phases of project development including permitting and environmental studies, rights-of-way services, design phase services and construction phase services. The choice and authority shall exist without regard to funding sources whether federal, state, regional, local or private, whether or not the project is programmed by a state, regional or local governmental entity, and whether or not the completed project is a part of any state owned or state operated system or facility.

SEC. 2. Nothing contained in Article VII of this Constitution shall be construed to limit, restrict or prohibit the State or any other governmental entities, including, but not limited to, cities, counties, cities and counties, school districts and other special districts, local and regional agencies and joint power agencies, from contracting with private entities for the performance of architectural and engineering services.

SEC. 4. Chapter 10.1 (commencing with Section 4529.10) is added to Division 5 of Title 1 of the Government Code, to read:

4529.10. For purposes of Article XXII of the California Constitution and this act, the term “architectural and engineering services” shall include all architectural, landscape architectural, environmental, engineering, land surveying, and construction project management services.

4529.11. All projects included in the State Transportation Improvement Program programmed and funded as interregional improvements or as regional improvements shall be subject to Article XXII of the California Constitution. The sponsoring governmental entity shall have the choice and the authority to contract with qualified private entities for architectural and engineering services. For projects programmed and funded as regional improvements, the sponsoring governmental entity shall be the regional or local project sponsor. For projects programmed and funded as interregional improvements, the sponsoring governmental entity shall be the State of California, unless there is a regional or local project sponsor, in which case the sponsoring governmental entity shall be the regional or local project sponsor. The regional or local project sponsor shall be a regional or local governmental entity.

4529.12. All architectural and engineering services shall be procured pursuant to a fair, competitive selection process which prohibits governmental agency employees from participating in the selection process when they have a financial or business relationship with any private entity seeking the contract, and the procedure shall require compliance with all laws regarding political contributions, conflicts of interest or unlawful activities.

4529.13. Nothing contained in this act shall be construed to change project design standards, seismic safety standards or project construction standards established by state, regional or local governmental entities. Nor shall any provision of this act be construed to prohibit or restrict the authority of the Legislature to statutorily provide different procurement methods for design-build projects or design-build-and-operate projects.

4529.14. Architectural and engineering services contracts procured by public agencies shall be subject to standard accounting practices and may require financial and performance audits as necessary to ensure contract services are delivered within the agreed schedule and budget.

4529.15. This act only applies to architectural and engineering services defined in Government Code Section 4529.10. Nothing contained in this act shall be construed to expand or restrict the authority of governmental entities to contract for fire, ambulance, police, sheriff, probation, corrections or other peace officer services. Nor shall anything in this act be construed to expand or restrict the authority of governmental entities to contract for education services including but not limited to, teaching services, services of classified school personnel and school administrators.

4529.16. This act shall not be applied in a manner that will result in the loss of federal funding to any governmental entity.

4529.17. *The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.*

4529.18. *If any act of the Legislature conflicts with the provisions of this act, this act shall prevail.*

4529.19. *This act shall be liberally construed to accomplish its purposes.*

4529.20. *This act seeks to comprehensively regulate the matters which are contained within its provisions. These are matters of statewide concern and when enacted are intended to apply to charter cities as well as all other governmental entities.*

SEC. 5. This initiative may be amended to further its purposes by statute, passed in each house by roll call vote entered in the journal, two-thirds of the membership concurring, and signed by the Governor.

SEC. 6. If there is a conflicting initiative measure on the same ballot, which addresses and seeks to comprehensively regulate the same subject, only the provisions of this measure shall become operative if this measure receives the highest affirmative vote.

Proposition 36: Text of Proposed Law

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8, of the California Constitution.

This initiative measure adds sections to the Health and Safety Code and the Penal Code; therefore, new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SUBSTANCE ABUSE AND CRIME PREVENTION ACT OF 2000

SECTION 1. Title

This act shall be known and may be cited as the "Substance Abuse and Crime Prevention Act of 2000."

SEC. 2. Findings and Declarations

The People of the State of California hereby find and declare all of the following:

(a) Substance abuse treatment is a proven public safety and health measure. Nonviolent, drug-dependent criminal offenders who receive drug treatment are much less likely to abuse drugs and commit future crimes, and are likelier to live healthier, more stable and more productive lives.

(b) Community safety and health are promoted, and taxpayer dollars are saved, when nonviolent persons convicted of drug possession or drug use are provided appropriate community-based treatment instead of incarceration.

(c) In 1996, Arizona voters by a 2-1 margin passed the Drug Medicalization, Prevention, and Control Act, which diverted nonviolent drug offenders into drug treatment and education services rather than incarceration. According to a Report Card prepared by the Arizona Supreme Court, the Arizona law: is "resulting in safer communities and more substance abusing probationers in recovery," has already saved state taxpayers millions of dollars, and is helping more than 75 percent of program participants to remain drug free.

SEC. 3. Purpose and Intent

The People of the State of California hereby declare their purpose and intent in enacting this act to be as follows:

(a) To divert from incarceration into community-based substance abuse treatment programs nonviolent defendants, probationers and parolees charged with simple drug possession or drug use offenses;

(b) To halt the wasteful expenditure of hundreds of millions of dollars each year on the incarceration—and reincarceration—of nonviolent drug users who would be better served by community-based treatment; and

(c) To enhance public safety by reducing drug-related crime and preserving jails and prison cells for serious and violent offenders, and to improve public health by reducing drug abuse and drug dependence through proven and effective drug treatment strategies.

SEC. 4. Section 1210 is added to the Penal Code, to read:

1210. Definitions

As used in Sections 1210.1 and 3063.1 of this code, and Division 10.8 (commencing with Section 11999.4) of the Health and Safety Code:

(a) The term "nonviolent drug possession offense" means the unlawful possession, use, or transportation for personal use of any controlled substance identified in Section 11054, 11055, 11056, 11057 or 11058 of the Health and Safety Code, or the offense of being under the influence of a controlled substance in violation of Section 11550 of the Health and Safety Code. The term "nonviolent drug possession offense" does not include the possession for sale, production, or manufacturing of any controlled substance.

(b) The term "drug treatment program" or "drug treatment" means a licensed and/or certified community drug treatment program, which may include one or more of the following: outpatient treatment, half-way house treatment, narcotic replacement therapy, drug education or prevention courses and/or limited inpatient or residential drug treatment as needed to address special detoxification or relapse situations or severe dependence. The term "drug treatment program" or "drug treatment" does not include drug treatment programs offered in a prison or jail facility.

(c) The term "successful completion of treatment" means that a defendant who has had drug treatment imposed as a condition of probation has completed the prescribed course of drug treatment and, as a result, there is reasonable cause to believe that the defendant will not abuse controlled substances in the future.

(d) The term "misdemeanor not related to the use of drugs" means a misdemeanor that does not involve (1) the simple possession or use of drugs or drug paraphernalia, being present where drugs are used, or failure to register as a drug offender, or (2) any activity similar to those listed in paragraph (1).

SEC. 5. Section 1210.1 is added to the Penal Code, to read:

1210.1. Possession of Controlled Substances; Probation; Exceptions

(a) Notwithstanding any other provision of law, and except as provided in subdivision (b), any person convicted of a nonviolent drug possession offense shall receive probation.

As a condition of probation the court shall require participation in and completion of an appropriate drug treatment program. The court may also impose, as a condition of probation, participation in vocational training, family counseling, literacy training and/or community service. A court may not impose incarceration as an additional condition of probation. Aside from the limitations imposed in this subdivision, the trial court is not otherwise limited in the type of probation conditions it may impose.

In addition to any fine assessed under other provisions of law, the trial judge may require any person convicted of a nonviolent drug possession offense who is reasonably able to do so to contribute to the cost of his or her own placement in a drug treatment program.

(b) Subdivision (a) does not apply to either of the following:

(1) Any defendant who previously has been convicted of one or more serious or violent felonies in violation of subdivision (c) of Section 667.5 or Section 1192.7, unless the nonviolent drug possession offense occurred after a period of five years in which the defendant remained free of both prison custody and the commission of an offense that results in (A) a felony conviction other than a nonviolent drug possession offense, or (B) a